

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 589 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

PATEL PREMJI RAVJI

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Appearance:

MR SP DAVE, APP for Petitioner

MR YS MANKAD for Respondent No. 1

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 01/04/99

ORAL JUDGEMENT

1. In this acquittal appeal with leave the State has brought under challenge judgment and order dated 10/5/1991 rendered by the Ld. Judicial Magistrate First Class, Naktrana, Kutch in Criminal Case No. 169 of 1988, whereby the Ld. Magistrate acquitted the respondent-accused of the offences punishable u/Ss. 7 and 16 of the Prevention of Food Adulteration Act, 1954 (for

short 'the Act').

2. The accused faced charge for selling ground-nut oil from an open tin containing 8 to 10 Kgs. of groundnut oil which was ultimately found to be adulterated. It so happened that on 30/4/1987 at about 4.00 p.m. the complainant had obtained sample of groundnut oil in presence of Panch witnesses and sent one part of the sample to the Public Analyst at Rajkot. Upon receipt of the Public Analyst's report it appeared that the groundnut oil contained in sample was adulterated. Hence, after consent was obtained complaint was filed against the accused before the Ld. Magistrate. While denying the allegations contained in the charge, the accused presented documents at Exhs. 34 and 35. At the conclusion of trial Ld. Magistrate came to the conclusion that the prosecution failed to comply with the provisions of sec. 11 (1)(c)(i) of the Act. Under the said provision, the Food Inspector was required to send one of the parts of the sample to the Public Analyst under intimation to the Local Authority. It has further been provided that remaining two parts should be sent to the Local Authority for the purpose of sub-section (2) of section 11. The complainant did not inform the Local Authority about having taken the samples and sent one part thereof to the Public Analyst. No evidence has been adduced by the prosecution for showing compliance of this provision of law. Ld. Magistrate has referred to the evidence of Food Inspector as also Exh. 28. He has, therefore, come to the conclusion that non-compliance of these provisions of law has become fatal to the prosecution case. Having gone through the record as well as the prosecution evidence and having heard the Ld. A.P.P. for the State, I am of the opinion that the Ld. Magistrate has not committed any error in accepting this ground of acquittal while rejecting the prosecution case.

3. It is a fact that the Panchas have not supported the prosecution case. Hence, bearing in mind the facts of the case, the Ld. Magistrate has to be taken to have correctly acquitted the accused on the aforesaid ground.

4. The impugned judgment of acquittal also proceeds on the ground of non-application of mind while according consent Exh. 29. I have gone through Exh. 29. Ld. Magistrate has come to the conclusion that inspite of the fact that it had been a defence right from the beginning that the accused was not concerned with the firm of M/s. Kunverji Ravji, in whose name the shop was being run, there was no mention about having perused or referred to any of the documents concerning the capacity in which the

accused was attending to the affairs of the shop at the relevant point of time. Besides, the consenting authority has also failed to apply mind with regard to what part of the provision of sec. 7 came to be violated by the accused. Under such circumstances, the Ld. Magistrate came to the conclusion that the prosecution failed to establish consent having been given by the Local Authority after applying mind as contemplated under sec. 20 of the Act. Having heard the Ld. A.P.P. and the Ld. Advocate for the accused, I am of the opinion that there is no reason to disturb also this finding of the Ld. Magistrate.

Hence, having regard to the facts of the case, this appeal deserves to be dismissed. Order accordingly.

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PVR.